IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.133 OF 1990

The State of Maharashtra] Appellant.

versus

Shankar Babulal Choudhari,]

Age 25 years,]

Police Constable No.1129,]

(Under Suspension)-Kurduwadi] Respondent.

R/o. At Post Dondaicha,] (Org.Accused)

Taluka Sindkheda, Dist.Jalgaon]

Dr.F.R.Shaikh, APP, for the State.

Mr.Abhaykumar Apte, Advocate appointed for the accused.

CORAM : D.G.DESHPANDE

S.R.SATHE, JJ.

DATED : FEBRUARY 27, 2007.

JUDGMENT : [PER D.G.DESHPANDE,J]

1. This appeal is filed by the State against acquittal of the accused who is the police constable, B.No.1129 from the offence under Sections 326, 323 and 504 of the Indian Penal Code by the Judicial Magistrate, F.C. (Railways) by judgment dated 26.10.1989.

2. We heard the learned APP Dr.Shaikh for the State and, Mr.Abhaykumar Apte, the learned advocate appointed by us to represent the accused.

3. It is the case of the prosecution that the accused was working as a constable at Railway Police Station, Kurduwadi on 6-6-1988. At that time another head constable Surgonda Anna Patil was also working in the same police station and was on duty from 8 a.m. to 8 p.m. When after his duty the complainant Surgonda Patil was talking with some other constable at 21.30 hours and when he was standing on the main gate of the police station, two persons came there. One of

them one was Sattar Qureshi. At that time the accused was also entering the police station. He was in hurry and was abusing to the owner of some theatre. Then accused run away towards the latrine in the police station, lifted an iron pipe and ran away out of the police station. Sattar Qureshi and other persons tried to stop him. But the accused succeeded in running away with the pipe.

4. After some time, according to the prosecution, the accused returned to the police station and threw the pipe in his hand. At that time one Babulal Wagrecha, who used to supply meals to the police staff, came there and asked the complainant about PSI. The complainant told Babulal Wagrecha that PSI was at his house. Then complainant and Babulal Wagrecha both went to the house of PSI. When they were near the water tank of the police station, the accused came there from the backside and gave fist blow to Babulal Wagrecha. Even Babulal Wagrecha fell down on the ground, the accused gave fist of his knees on the chest of Babulal. Babulal started shouting, the accused ran way and came back with the pipe and gave its three blows on the head of the

complainant. The complainant received injuries. His uniform was blood stained. Babulal Wagrecha managed to escape from the spot and ran away towards Municipal Naka. Accused also ran away from the spot.

5. It was in this background that the complaint against the accused was lodged. The complainant was sent to the primary health centre for medical examination and then he was advised to go to Solapur for taking further medical treatment where he was admitted for two days. PSI Chorge carried out investigation, recorded the statement of witnesses, blood stained uniform and pipe were seized, accused was arrested on the next day of the incident and sent him for medical examination as he was under the influence of liquor, then charge sheet came to be filed before the Court.

6. The defence of the accused was of total denial and false implication due to enmity.

7. The prosecution has examined twelve witnesses. The trial Court disbelieved the case of the prosecution and acquitted the accused as

stated above. Hence this appeal.

8. The learned APP for the State contended that the judgment of acquittal is totally perverse and acquittal has to be set aside and accused was liable to be convicted. The learned advocate for the accused, on the other hand, contended that the judgment was reasonable, just and proper and no interference was required.

9. We have given our anxious consideration to the submissions made. The incident is of 1988, the judgment of acquittal is of 1989, the offences alleged against the accused were under Sections 326, 323 and 304 of the Indian Penal Code, 18 years have lapsed from the date of incident, both the accused and complainant were serving in the police department and, therefore, it was necessary to find out whether the judgment of the trial court could be said to be perverse and we are constrained to hold that the judgment of the trial court cannot be said to be perverse. Out of the two views possible in the circumstances, the trial court has taken a view which has resulted in acquittal of the accused and the said view cannot be said to be perverse

for the following reason.

10. The trial Court found that first the prosecution has totally failed to prove or bring on record any motive for the accused to assault his senior. Secondly, there is nothing on record to show that the accused was mentally derailed or was not at his senses while performing his duty as constable. There was no reason absolutely for the accused to take iron pipe and beat the complainant. The court found that P.W.7 could not have witnessed the incident of assault because from the description of spot given by the constable (PW 7), he was not in a position to see the incident. The court also found that P.W.6 Shahaji Shinde is not the eye witness to the incident. Because he has not seen the assault though he saw the accused taking away iron pipe.

11. The judgment of the trial court shows that the evidence of each of the witnesses was consider very minutely. Many infirmities are found by the trial court in the evidence of eye witnesses. There is no arrest panchanama of the accused. The pipe was found with the accused in the next day morning. There is no explanation

why the accused was with the pipe through out the night and why the pipe was not immediately seized in the police station. The complaints of Babulal Wagrecha and Sattar Qureshi were not on record about this incident of assault and the injuries sustained by them and, therefore, in view of all these facts, the acquittal of the accused by the trial Court cannot be said to be perverse. We, therefore, pass the following order :-

:ORDER:

Appeal of the State is dismissed.

Acquittal of the accused is upheld.

The accused is on bail, his bail bond stands cancelled.

[D.G.DESHPANDE,J]

[S.R.SATHE, J]